6

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 214

ERNEST R. FORREST, PETITIONER,

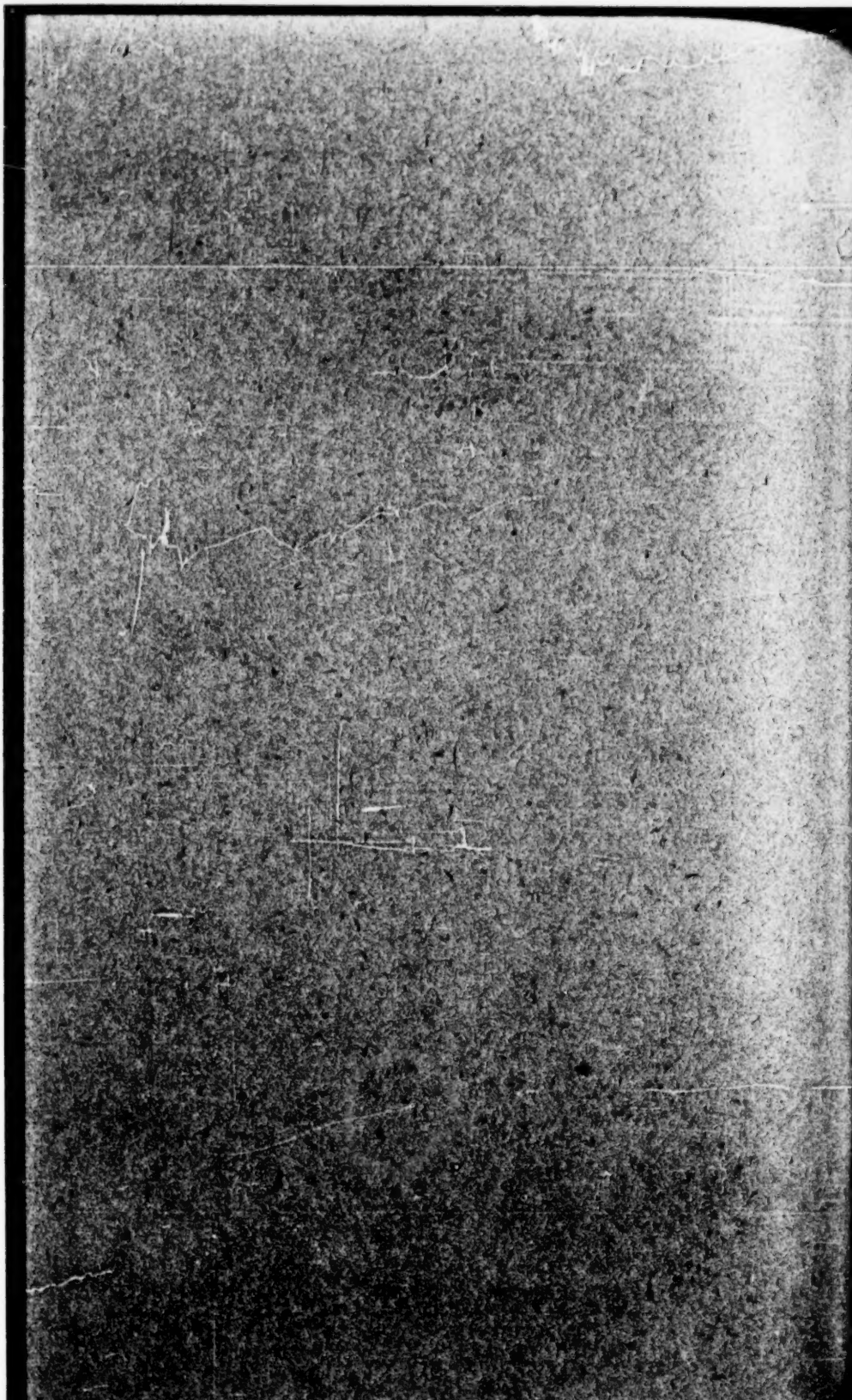
vs.

ARCH R. JACK, AS RECEIVER OF THE NEPHI NATIONAL BANK OF NEPHI, UTAH.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

PETITION FOR CERTIORARI FILED JULY 23, 1934.

CERTIORARI GRANTED OCTOBER 8, 1934



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 214

ERNEST R. FORREST, PETITIONER,

vs.

ARCH R. JACK, AS RECEIVER OF THE NEPHI NATIONAL BANK OF NEPHI, UTAH.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Tenth Circuit	A	1
Caption (omitted in printing)	A	
Record from D. C. U. S., District of Utah	1	1
Caption (omitted in printing)	1	
Second amended complaint	1	1
Exhibit A—Order of Comptroller of the Currency appointing Arch R. Jack, receiver of Nephi National Bank	8	8
Exhibit B—Assessment upon shareholders of Nephi National Bank	9	8
Demurrer to second amended complaint	10	9
Answer	10	10
Reply	13	13
Minute entry of judgment	15	15
Judgment	16	15
Order extending time	16	16
Bill of exceptions	17	16
Caption	17	16
Testimony of William A. C. Bryan	17	17

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 24, 1934.

—5562-C.

	Original	Print
Testimony of E. R. Forrest	18	17
Plaintiff's motion for judgment	24	23
Defendant's motion for judgment	24	24
Defendant's Exhibit 1—In the matter of the estate of Henry Forrest, deceased:		
Decree of distribution	25	24
Decree showing that notice to creditors has been given	28	28
Order approving account of administrator	29	28
Petition for final discharge of administrator	30	29
Certificate of Nephi National Bank	33	32
Decree of final discharge	34	33
Clerk's certificate	34	34
Defendant's Exhibit 2—Check for $30.00 payable to order of Henry Forrest estate	35	34
Plaintiff's Exhibit A—Warranty Deeds:		
Rhoda Forrest to Emma Lucille Hawkins, April 16, 1920	35	35
Rhoda Forrest to Emma Lucille Hawkins, March 20, 1920	36	35
Rhoda Forrest to Ernest R. Forrest, April 16, 1920	37	36
Rhoda Forrest to Emma L. Hawkins, April 16, 1920	38	37
County recorder's certificate	39	38
Plaintiff's Exhibit B—Warranty deed, Rhoda Forrest to Ernest R. Forrest, April 16, 1920	39	38
Approval of bill of exceptions by attorney for plaintiff	41	40
Affidavit of service by mail	41	41
Order settling bill of exceptions	42	41
Petition for appeal	42	42
Assignment of errors	43	43
Order allowing appeal without bond	44	44
Citation with acceptance of service; Recital as to,	44	44
Præcipe for transcript of record	45	44
Clerk's certificate (omitted in printing)	46	
Motion to dismiss appeal	47	45
Order of submission	48	46
Opinion, Bratton, J.	48	47
Dissenting opinion, Lewis, J.	54	52
Judgment	59	58
Motion for order staying mandate	60	58
Order staying mandate	61	59
Clerk's certificate (omitted in printing)	61	
Order allowing certiorari	63	60

[fols. ½ & A] [Captions omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Law. No. 12959

ARCH R. JACK, as Receiver of the Nephi National Bank of Nephi, Utah, a Corporation, Plaintiff,

vs.

ERNEST R. FORREST, Defendant

SECOND AMENDED COMPLAINT—Filed April 14, 1933

The plaintiff complains of the defendant and for cause of action alleges:

1

That the Nephi National Bank of Nephi, Utah, is and at all times herein mentioned was a national banking association duly organized and existing under and by virtue of the laws of the United States of America with its principal place of business at Nephi, within the District of Utah.

2

That the said Nephi National Bank of Nephi, Utah, on the 1 day of December, 1931, was insolvent and unable to pay its just and legal debts and pursuant to an order of its board of directors the said banking association on said date closed and suspended business.

3

That on the 26 day of January, 1932, the Comptroller of the Currency of the United States of America, having theretofore determined said Nephi National Bank to be insolvent and unable to pay its just and legal debts, made and [fol. 2] issued his order appointing plaintiff as Receiver of said Nephi National Bank with all the powers, duties and responsibilities given or imposed upon a receiver under the

provisions of the Revised Statutes of the United States which authorize the appointment of a receiver. That a copy of said order of appointment is hereto annexed marked Exhibit A and by reference made a part hereof.

4

That immediately thereupon plaintiff accepted said appointment, gave bond and qualified as such receiver, took possession of all books, records and assets of said Nephi National Bank and ever since has been and now is the duly appointed, qualified and acting receiver of said Nephi National Bank and in possession of its books, records and assets.

5

That immediately upon taking possession of the books, records and assets of said banking association, plaintiff made full and complete examination into such books, records and assets and into the affairs of said banking association and made due accounting thereof to said Comptroller of the Currency. That upon due consideration of the said report and accounting, and upon due evaluation of the uncollected assets of said Nephi National Bank and it appearing therefrom to the satisfaction of said Nephi National Bank and it appearing therefrom to the satisfaction of said Comptroller of the Currency that in order to pay the debts of said Nephi National Bank it was necessary to enforce the individual liability of the shareholders of said banking association to the total amount of such liability, to-wit one hundred dollars, upon each and every share of stock of said association outstanding at date of its failure —all as prescribed by Sections 5151 and 5234 of the Revised Statutes of the United States, Section 1c 156, Act of June 30, 1876, and Section 23, Act approved December 23, 1913, known as the Federal Reserve Act—the said Comptroller of the Currency did on the 8 day of March, 1932, make an assessment and requisition upon the shareholders of said Nephi National Bank for $50,000, being one hundred dollars per share of stock outstanding, to be paid on or before the 15 day of April, 1932, and said Comptroller of the Currency did then and there make demand upon each [fol. 3] and every one of the shareholders of said Nephi National Bank for one hundred dollars upon each and every share of such stock held or owned by such share-

holders at the time of the failure of said bank, and said Comptroller of the Currency did then and there, direct plaintiff as receiver to take all necessary proceedings, by suit or otherwise, to enforce to that extent the individual liability of said shareholders. That a copy of said assessment, requisition and order is hereto annexed marked Exhibit B and by reference is made a part hereof.

6

That Henry Forrest died testate the 17 day of August, 1917; that on the 9 day of March, 1918, by an order of the Fifth District Court of Utah in and for Juab County the defendant Ernest R. Forrest was duly appointed administrator with the will annexed of the estate of said deceased; that he thereafter gave bond and took the oath required by law and on the 18 day of March, 1918, received letters of administration with the will annexed and continuously from said date until the 1 day of December, 1931, he continued to be and act as the administrator with the will annexed of said estate.

7

That at the time of his death the said Henry Forrest was the owner of six shares of stock of the Nephi National Bank represented by certificates Nos. 56 and 57 issued in the name of Henry Forrest, and registered in his name in the books of said bank.

8

That said defendant Ernest R. Forrest, upon qualifying as administrator of the estate of said Henry Forrest, deceased, received and took possession of all of the property of said estate including the said six shares of stock of Nephi National Bank. That the property of said estate received and taken possession of by said defendant was of a value of more than $10,000, exclusive of the said bank stock and exclusive of all debts of said decedent and after paying all expenses of administering his estate. That said defendant Ernest R. Forrest as administrator as aforesaid duly rendered to and filed with said Fifth District Court of Utah an inventory as required by law of the property of said estate and therein listed and included the aforesaid bank stock as part of the assets of said estate.

[fol. 4] 9

That by reason of the holding of the aforesaid bank stock and by virtue of the provisions of Sections 64 and 66 of Title 12, United States Code, the said Henry Forrest, at the time of his death, and the said defendant as administrator of the estate of said decedent, were each liable and responsible until a transfer of said stock should be made to and accepted by a solvent transferee for all contracts, debts and engagements of the said Nephi National Bank to the amount of six hundred dollars and all of the property and estate of the said Henry Forrest which came into the hands of the said defendant Ernest R. Forrest as administrator was liable in like manner and to the same extent as the said Henry Forrest was in his lifetime and would be if now living and competent to act and hold the said bank stock in his own name.

10

That upon acceptance of said trust as administrator of the estate of Henry Forrest, deceased, it became and was the duty of the said defendant Ernest R. Forrest to reserve and hold assets of the said estate for the payment of any liability which might accrue or arise in favor of creditors of the said Nephi National Bank or in the alternative to procure the acceptance by and transfer to some solvent transferee of the said six shares of stock of said National Bank.

11

That said defendant, Ernest R. Forrest, in violation of the duty imposed upon him as administrator and by the provisions of Sections 64 and 66 of Title 12, United States Code, wrongfully and unlawfully and with intent, as plaintiff is informed and believes, to prevent said Nephi National Bank and its creditors from enforcing any stockholders liability which might accrue on said stock, distributed, delivered up and disposed of all of the assets and property of the said estate, except said bank stock, without procuring any person to accept the said bank stock and without causing the said stock to be transferred to or accepted by any legatee, devisee or heir of said Henry Forrest or any other person and without requiring any refunding bond or other security or indemnity, and no person has

at any time accepted the said bank stock and the same is now and at all times herein mentioned was registered on [fol. 5] the books of said bank in the name of Henry Forrest as owner; that by reason of the foregoing the said defendant has committed and is guilty of devastavit and breach of trust and is personally liable to the plaintiff herein for the amount of the above mentioned assessment on said bank stock.

12

That by the will of said Henry Forrest, said decedent bequeathed one thousand dollars to Mabel Ruth Owen and devised and bequeathed the remainder of his estate as follows:

"All the rest, residue and remainder of all real and personal property, of any and every kind and nature whatever, owned by me at the time of my death, after satisfying the above named directions and bequest, I give, devise and bequeath to my beloved wife Rhoda Forrest, for her sole use, behoof and benefit, in her support and maintenance for and during her natural life; and should my said wife leave, at the time of her death, any of said property, either real or personal, then I give, devise and bequeath all the rest, residue and remainder of all such property, real and personal of any and every kind and nature, to my beloved son Ernest R. Forrest and my beloved daughter Lucile Hawkins, to be equally divided between them, share and share alike."

13

That, as plaintiff is informed and believes and therefore alleges, the defendant Ernest R. Forrest on or about the 20 day of January, 1920, entered into an arrangement and made an agreement with the said Rhoda Forrest whereby the said defendant agreed to assign and transfer to said Rhoda Forrest his interest as remainder-man in the property of the estate of said Henry Forrest, deceased, and in consideration thereof the said Rhoda Forrest agreed to assign and transfer to the said Ernest R. Forrest certain parts and parcels hereinafter described of the property of the estate of said decedent aggregating in value more than $5,000.00. That pursuant to said agreement and with the intent and purpose and for the sole consideration of obtain-

ing for himself the fee simple title to certain portions of the property of the estate of said Henry Forrest, deceased, hereinafter described, the said Ernest R. Forrest executed and delivered to said Rhoda Forrest an assignment of his [fol. 6] interest in said estate as remainderman and thereafter, to-wit, on the 16 day of April, 1920, the said Rhoda Forrest, pursuant to the aforesaid agreement and without other consideration, conveyed by warranty deed to the said defendant Ernest R. Forrest the real estate hereinafter described, which at the time of his death belonged to the said Henry Forrest, deceased. That the real estate so conveyed was of a value exceeding $5,000.00 and is situate in Juab County, Utah, and described as follows:

Beginning at the Southwest corner of Lot 3, Block 20, Plat "A", of the Nephi Survey of Building Lots; thence North 3 rods; thence East 13 rods; thence South 3 rods; thence West 13 rods to the place of beginning.

Beginning 3 rods North of the Southwest corner of Lot 3, Block 20, Plat "A", of the Nephi Survey of Building Lots, thence running North 3½ rods; thence East 13 rods; thence South 3½ rods; thence West 13 rods to the place of beginning.

The South ½ of Lot 4, Block 18, Plat "A", of Nephi Survey of Building Lots.

14

That by means of the aforesaid arrangement and without other consideration the defendant received and accepted and ever since and now claims and holds the above described items of property of the estate of Henry Forrest, deceased, which property is and at all times herein mentioned was of a value of more than five thousand dollars and plaintiff alleges upon his information and belief that the said Rhoda Forrest received the assignment and transfer of the interest of the defendant in said estate upon the express agreement that she should, upon the closing and distribution of the estate of said Henry Forrest, deceased, transfer and convey to the defendant the legal title to said parcels of real estate, which she did so convey to the defendant immediately upon entry of decree of distribution of said estate.

15

That by reason of the defendant's wrongful acts and conduct above set forth and by reason of defendant's receiving and accepting said property belonging to the estate [fol. 7] of said Henry Forrest without consideration, the said defendant has become and is liable to the plaintiff for the amount of the stockholder's assessment aforesaid and the above described property so received and now held by defendant as aforesaid is and at all times herein mentioned has been subject to a lien in favor of the plaintiff for the payment of the amount of said assessment, to-wit, $600.00 together with interest thereon at eight per cent per annum from 15 April, 1932 until paid.

16

That demand has been made upon said defendant for payment but he has failed, neglected and refused to pay the same or any part thereof.

Wherefore plaintiff prays judgment against the defendant for the sum of six hundred dollars and interest thereon at the rate of eight per cent per annum from 15 April, 1932, and for costs and such other relief as shall be just or equitable.

(Signed) Will L. Hoyt, Plaintiff's Attorney. P. O. Address: Nephi, Utah.

Duly sworn to by Arch R. Jack. Jurat omitted in printing.

State of Utah,
County of Juab, ss:

Priscilla Wilson being first duly sworn on oath deposes and says: That on the 12 day of April, 1933, she mailed a true copy of the foregoing second amended complaint to defendant's attorney, by depositing same in due course of [fol. 8] mails in the U. S. Post Office at Nephi, Utah, enclosed in an envelope with postage fully prepaid thereon legibly addressed to Mr. Claude F. Baker, Attorney at Law, Ureka, Utah.

(Signed) Priscilla Wilson.

Subscribed and sworn to before me this 12 day of April, 1933. (Signed) Will L. Hoyt, Notary Publis. (Seal.) Residence: Nephi, Utah. My commission expires 10 May, 1934.

[File endorsement omitted.]

EXHIBIT A TO SECOND AMENDED COMPLAINT

No. 8508

Treasury Department

Office of the Comptroller of the Currency

Washington, D. C., January 26, 1932.

Whereas, from information on file in this bureau I am satisfied that "The Nephi National Bank," located in the City of Nephi, County of Juab, and State of Utah is insolvent and unable to pay its just and legal debts:

Now, Therefore, I, F. G. Awalt, Acting Comptroller of the Currency, in pursuance of the power and authority vested in me by law and under the provisions of Section 1 of an Act of Congress entitled "An Act authorizing the appointment of Receivers of National Banks, and for other purposes," approved June 30, 1876, do hereby appoint Arch R. Jack, Receiver of "The Nephi National Bank" with all the powers, duties and responsibilities given to or imposed upon a Receiver under the provisions of the Revised Statutes of the United States which authorize the appointment of a Receiver.

In Witness Whereof, I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the City of Washington, in the District of Columbia, this Twenty-sixth day of January, A. D. 1932.

F. G. Awalt, Acting Comptroller of the Currency.

(Seal.)

[fol. 9] EXHIBIT B TO SECOND AMENDED COMPLAINT

No. 8508

Assessment Upon Shareholders

Treasury Department

Office of the Comptroller of the Currency

Washington, March 8, 1932.

In the Matter of Nephi National Bank of Nephi, Utah

To all whom it may Concern:

Whereas, upon a proper accounting by the Receiver heretofore appointed to collect the assets of the "Nephi Na-

tional Bank of Nephi," Utah, and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the individual liability of stockholders therefore to the extent hereinafter mentioned, as prescribed by Sections 5151 and 5234 of the Revised Statutes of the United States, Section 1c 156, Act of June 30, 1867, and Section 23 Act approved December 23, 1913, known as the Federal Reserve Act.

Now, Therefore, by virtue of the authority vested in me by law, I do hereby make an assessment and requisition upon the shareholders of the said "Nephi National Bank of Nephi," Utah, for Fifty Thousand ($50,000.00) Dollars, to be paid by them on or before the fifteenth day of April, 1932, and I hereby make demand upon each and everyone of them for the par value of each and every share of the capital stock of said association held or owned by them, respectively, at the time of its failure; and I hereby direct Arch R. Jack, the Receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

In Witness Whereof, I have hereunto set my hand and caused my seal of office to be affixed to these presents, at the City of Washington, in the District of Columbia this eighth day of March, A. D. 1832.

J. W. Pole, Comptroller of the Currency. (Seal.)

[fol. 10] IN UNITED STATES DISTRICT COURT

DEMURRER TO SECOND AMENDED COMPLAINT—Filed April 22, 1933

Comes now the defendant and demurring to the second amended complaint of plaintiff, for grounds of demurrer states:

1. That said second amended complaint does not state facts sufficient to constitute a cause of action.

2. That several causes of action have been improperly united in the second amended complaint, in this to-wit: that the second amended complaint attempts to state a cause

of action against defendant in his capacity as administrator of the estate of Henry Forrest, Deceased, and improperly united therewith a cause of action against defendant as the grantee of the estate's distributee.

3. That there is a defect of parties defendant in this to-wit: that the administrator of the estate of Henry Forrest, Deceased, has not been made a party defendant herein.

Wherefore, defendant prays that his demurrer be sustained.

(Signed) Claude F. Baker, Attorney for Defendant.

(Affidavit of service attached.)

IN UNITED STATES DISTRICT COURT

ANSWER—Filed April 29, 1933

Without waiving any rights under demurrer in said cause, the defendant in answering the second amended complaint, admits, denies and alleges:

1. Admits paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of said second amended complaint.

2. Denies each and every allegations of paragraphs 9, 10 and 11 of said second amended complaint. In answering said paragraph 11, defendant alleges that the only reason that said stock was registered in the name of said deceased after March 11, 1920, was the neglect and failure of the bank to discharge its duty in registering the said stock in the name of Rhoda Forrest, deceased; that from and after March 11, 1920, defendant had no control or possession of said stock; that from and after March 11, [fol. 11] 1920, said stock was in the possession and control of said bank and said Rhoda Forrest; that said bank had control and possession of said stock and knowledge of the ownership of said Rhoda Forrest for a considerable time prior to the date when it suspended business: that said stock is now, and ever since March 11, 1920, has been the sole property of said Rhoda Forrest with full knowledge of said bank and plaintiff, and has not been the property of the estate of Henry Forrest, deceased.

3. Answering paragraph 12 of said second amended complaint, defendant admits same.

4. Answering paragraph 13 of said second amended complaint, defendant admits that on or about January 20, 1920, he conveyed to Rhoda Forrest his remainder interest in said estate; that on April 16, 1920, he received from Rhoda Forrest a conveyance of the real estate described in said paragraph; that said realty was of a value of not to exceed $2,000.00. Further answering said paragraph defendant denies each and every allegation thereof not hereinabove admitted, qualified or denied.

14. Answering paragraph 14 of said second amended complaint, defendant admits that ever since April 16, 1920, he has been the owner of said realty described in paragraph 13. Further answering said paragraph 14, defendant denies each and every allegation thereof not herein admitted, qualified or denied.

15. Answering paragraph 15 of said second amended complaint, defendant denies each and every allegation thereof.

16. Answering paragraph 16 of said second amended complaint, defendant admits that demand for payment was made; that defendant has refused to pay same.

17. Further answering said second amended complaint, defendant denies each and every allegation therein continued.

As a further answer, defendant alleges:

1. That on March 11, 1920, the Fifth Judicial District Court of Juab County, Utah, duly entered in the matter of the estate of Henry Forrest, deceased, then and there pending in said court, its decree of distribution of all the property and assets of said estate, and including the six shares of bank stock described in the pleadings in this cause. That defendant was then and there the duly ap- [fol. 12] pointed, qualified and acting administrator with will annexed of said estate. That on April 7, 1920, said decree was duly filed and entered in said court. That said decree distributed all the property of said estate to Rhoda Forrest, the wife of said deceased, and the mother of defendant; that all of said property pursuant to said decree,

and as ordered and required by said decree was forthwith delivered to said Rhoda Forrest including said 6 shares of bank stock; that from said time on, that is from and after March 11, 1920, said Rhoda Forrest and said bank had the sole custody, control and possession of said stock; that said bank at all times thereafter knew that Rhoda Forrest was the sole owner of said stock; that all rights, benefits and dividends accruing to said stock thereafter were received by said Rhoda Forrest and not by the estate of Henry Forrest, deceased, or by defendant.

2. That on November 18, 1931, the said bank issued its receipt, which is on file in the office of the clerk of the District Court of Juab County, Utah, in the files of the estate of Henry Forrest, deceased, and which has been on file there ever since November 18, 1931, as follows, to-wit:

"Nephi City, Utah, November 18, 1931. This is to certify that Nephi National Bank, a corporation organized and existing under, and by virtue of the laws of the United States of America, has on this 18th day of November, A. D. 1931, received of Ernest R. Forrest, Administrator of the estate of Henry Forrest, deceased, the following described certificates of the capital stock of said bank, to-wit:

"Certificate No. 56, date May 28, 1907, signed by E. R. Booth, Cashier and J. S. Ostler, President, issued to Henry Forrest for one share.

"Certificate No. 57, dated May 28, A. D. 1907, signed by E. R. Booth, Cashier, and J. S. Ostler, President, to Henry Forrest for five shares.

"The said certificates and each of them to be held in trust for the estate of Rhoda Forrest, deceased.

"Nephi National Bank, by Ralph Brough, Chr."

Filed #427 probate, Nov. 18, 1931. J. H. Vickers, Clerk."

[fol. 13] That upon the death of his mother, said Henry Forrest as son and an heir of his said mother, Rhoda Forrest, deceased, discovered said stock among the effects of her estate, and delivered said stock to said Nephi National Bank as set forth in said receipt; that said bank

thereupon issued said receipt as above set forth which defendant filed in the files of the estate of Henry Forrest, deceased, as above set forth on November 18, 1931.

3. That by reason of the facts as above appearing, plaintiff and said bank are estopped to assert that the estate of Henry Forrest, deceased, is the owner of said stock, or that defendant is in any manner liable to plaintiff in respect to said stock.

Wherefore, defendant prays that plaintiff take nothing; that defendant have his costs herein.

(Signed) Claude F. Baker, Attorney for Defendant.

Duly sworn to by E. R. Forrest. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

REPLY—Filed April 29, 1933

The plaintiff for reply to the answer of defendant herein admits, denies, and alleges as follows:

1. The plaintiff alleges that said answer does not state facts sufficient to constitute any defense to the cause of action set forth in plaintiff's complaint.

2. Plaintiff admits that, on or about November 18, 1931 [fol. 14] (being twelve days prior to the failure of the Nephi National Bank), the defendant delivered to said Nephi National Bank certificates Nos. 56 and 57 evidencing the six shares of stock of said Nephi National Bank involved in this action, and that defendant took from said Nephi National Bank the receipt referred to in paragraph 2 of the defendant's affirmative answer. Plaintiff admits that said certificates of bank stock thereafter remained in possession of said Nephi National Bank until its failure and are now in possession of plaintiff.

3. Replying to the allegations of paragraph one of defendant's affirmative answer, plaintiff admits the entry, at the time alleged, of the decree of distribution in the matter of the estate of Henry Forrest, deceased and ad-

mits that said decree directed distribution of all the property of the estate of Henry Forrest, deceased, including the bank stock herein involved, to Rhoda Forrest, the wife of said deceased. Plaintiff upon information and belief denies the remaining allegations of said paragraph one and alleges that defendant did not at any time deliver to said Rhoda Forrest the said bank stock or possession of the real estate described in paragraph thirteen of plaintiff's complaint herein; but on the contrary kept and retained possession of said real estate and at all times claimed and held possession of the said real estate as his own pursuant to the arrangement and agreement between the defendant and the said Rhoda Forrest referred to in paragraph thirteen of plaintiff's complaint. Plaintiff further alleges that the said Rhoda Forrest immediately after entry of said decree of distribution, pursuant to the aforesaid arrangement and agreement, conveyed to the defendant the legal title to the said real estate without any other consideration. Plaintiff denies that the said Nephi National Bank had knowledge or notice at any time prior to November 18, 1931, of the said decree of distribution, or of the said Rhoda Forrest being entitled to receive the said bank stock.

4. Answering paragraph two of defendant's affirmative defense, plaintiff admits the issuance of the receipt therein mentioned at the time alleged, and that said receipt has been on file in the office of the clerk of the district court as alleged. Plaintiff has not sufficient knowledge or information upon which to base a belief as to the truth of the [fol. 15] remaining allegations of said paragraph, and therefore and upon that ground, denies the claim.

5. Except as herein before admitted, plaintiff denies each and every affirmative allegation of defendant's answer.

(Signed) Will L. Hoyt, Plaintiff's Attorney.

Duly sworn to by Arch R. Jack. Jurat omitted in printing.

[File endorsement omitted.]

Copy received April 29, 1933. Claude F. Baker, Atty. for Defendant.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—April 29, 1933

[Before Judge Johnson]

At this 29th day of April, 1933, comes plaintiff by Will L. Hoyt, his attorney, and defendant by Claude Baker, his attorney, and the demurrer to the second amended complaint was by the court overruled and answer and reply were thereupon filed in open court and the case called for trial. Upon stipulation in open court it was ordered that jury be waived and on the part of defendant W. A. C. Bryan and E. R. Forrest were sworn and examined and both sides rest. And the court having heard the arguments of counsel finds in favor of defendant.

Wherefore, it is ordered and adjudged by the court that plaintiff, Arch R. Jack, Receiver of the Nephi National Bank of Nephi, Utah, a corporation, take nothing by its [fol. 16] complaint herein and that defendant, Ernest R. Forrest recover of and from plaintiff his costs herein expended to be taxed upon a verified cost bill and have execution therefor. And let judgment accordingly be entered in the judgment book of this court.

IN UNITED STATES DISTRICT COURT

JUDGMENT

At this 29th day of April, 1933, the same being a juridical day of the April term, 1933, Central Division of said court, Present, Honorable Tillman D. Johnson, Judge, plaintiff appearing by Will L. Hoyt, his attorney, and defendant by Claude Baker, his attorney, and the demurrer to the second amended complaint heretofore filed was by the court overruled and thereupon answer and reply were filed in open court and this cause came on for trial, whereupon, stipulation was made in open court that jury be waived, and on the part of plaintiff W. A. C. Bryan and E. R. Forrest were sworn and examined as witnesses and both sides rest. Whereupon the court having heard the arguments of counsel and being well advised finds in favor of defendant and against plaintiff.

Wherefore, it is ordered and adjudged by the court that plaintiff, Arch R. Jack, Receiver of the Nephi National Bank of Nephi, Utah, a corporation, take nothing by its complaint herein and that defendant, Ernest R. Forrest recover of and from plaintiff his costs herein expended to be taxed upon a verified cost bill and have execution therefor.

Attest:

W. B. Wilson, Clerk.

In United States District Court

Order Extending Time—Filed June 5, 1933

Good cause appearing therefor, it is hereby ordered that plaintiff may have until and including June 20, 1933, within which to prepare, serve and lodge his bill of exceptions in the above entitled case.

Dated this 27th day of May, 1933.

Tillman D. Johnson, Judge.

[fol. 17] In United States District Court

Bill of Exceptions—Lodged Mar. 27, 1933; Filed June 26, 1933

Be it remembered that the above entitled case came on for hearing of defendant's demurrer to the second amended complaint of plaintiff before the Honorable Tillman D. Johnson, judge of the above entitled court on Saturday, April 29, 1933, Will L. Hoyt, Esq., representing the plaintiff and Claude F. Baker, Esq., representing the defendant. The demurrer of the defendant was overruled and denied. Whereupon, the case was, by agreement of the parties, called for trial upon the second amended complaint of the plaintiff, the answer of the defendant and the reply of the plaintiff thereto. The plaintiff and defendant stipulated in open court that a jury be waived and that the case proceed to trial before the court and it was so ordered. Thereupon the following proceedings were had:

WILLIAM A. C. BRYAN called and sworn as a witness for the defendant testified as follows:

I reside at Nephi, Utah, am a practicing attorney, and have been for a great many years. On November 18, 1931, I acted as attorney for E. R. Forrest, defendant herein. I am familiar with the original receipt filed in the District Court of Juab County, Utah, in the matter of the estate of Henry Forrest, deceased, a copy of which receipt is contained in defendant's Exhibit 1 herein headed "Nephi, State of Utah, November 18, 1931." I delivered the certificates of stock of Nephi National Bank mentioned in this receipt to the cashier of said bank on November 18, 1931. I stated to him at that time that Rhoda Forrest, or that the estate of Henry Forrest, deceased, had been closed some time before, the final report had been made, the final account of the administrator and the distribution had been made distributing the property of the estate of Henry Forrest, deceased to Rhoda Forrest, and that I found by the decree of distribution that the certificates of stock described in this receipt had been found by Mr. E. R. Forrest, who was the administrator of the estate of Henry Forrest, deceased, that he had discovered these certificates after the death of Rhoda Forrest, deceased, and he wanted to know what to do with them. I told him he had better deliver them to the Nephi National Bank to be held by the bank in trust for the estate of Rhoda Forrest, deceased, [fol. 18] that no administration had been had on that estate, and that these certificates of stock belonged to the estate of Rhoda Forrest, deceased. I left the two stock certificates mentioned in that receipt with the Nephi National Bank at that time, and so far as I know, they are still in possession of the bank.

E. R. FORREST, the defendant herein, testified in his own behalf as follows:

I reside at Nephi, Utah, am sixty-one years of age, and am a hotel proprietor. I was the administrator of the estate of my deceased father, Henry Forrest. I carried out the decree of distribution in my father's estate (copy of which is contained in defendant's Exhibit 1 herein). I carried out the provisions of said decree of distribution

according to its terms by delivering the property mentioned in that decree to my mother, Rhoda Forrest. I delivered to my mother the two certificates of stock of Nephi National Bank mentioned in said decree. I next saw those certificates of stock after the death of my mother. She died the 4th of July, 1931. I found the certificates at my mother's home in a little box she kept things in. As her son and heir, I went through her effects and discovered these certificates in a box at her home. I showed them to Mr. Bryan and he advised me to deliver them to the bank. I did not have them in my possession after distribution was made until I found them among my mother's effects.

Defendant's Exhibit 2, a dividend check of the Nephi National Bank dated June 30, 1920, was mailed to Henry Forrest and the mail came to me. I took it over and deposited it in the Nephi National Bank to my mother's account. I told them that the stock belonged to mother, and that they had better make out the checks to her hereafter.

(Thereupon defendant's Exhibit 2 was offered and admitted in evidence. Defendant's Exhibit 1, being a certified copy of certain probate court files in the estate of Henry Forrest, deceased, was then offered and admitted in evidence Defendant's Exhibits 1 and 2 are attached at the end of this bill of exceptions and are hereby referred to.)

I think I am familiar with the pleadings in this cause. I think I have read them over. Referring to the allegation [fol. 19] in the second amended complaint, that in consideration of surrendering my interests as a remainderman of the estate of my father, to my mother, I received certain property under an agreement—there was no agreement at all. My mother wished to get rid of her property. She was blind and could not attend to anything herself. She wanted to sell it or dispose of it. Nobody knew how she wanted to dispose of it. She did not say. I consulted Mr. Burton who was the attorney of the estate at the time it was settled, and he advised her to do that way with it.

Q. That is, for you to convey your interest to her?
A. Yes, sir.
Q. And he advised your sister the same way?
A. He advised her the same way.

We had no understanding or agreement that mother was to convey any property back to us afterward. A short time

afterward I received a deed to certain property as described in the second amended complaint from my mother.

Q. Did you pay anything for that?
A. No.
Q. Under what circumstances did you receive that property?
A. She just wished to give it to us, dispose of it that way I guess.

I did not have any conversations or make any representations to her that induced her to make the conveyance. She just did it of her own accord. It was voluntary on her part as far as I know. So far as I am informed, there was no connection between my deeding my interest away as remainderman and thereafter receiving this property from my mother.

On cross-examination Ernest R. Forrest testified as follows:

The conveyance to me by my mother was just about a month after the decree of distribution of my father's estate. The decree of distribution was within a month or so after my assignment to my mother of my interest in the estate.

Q. Your mother conveyed to you and your sister the bulk of the estate, did she not, within a month or six weeks following the decree of distribution?
[fol. 20] A. I think the records show that, yes.
Q. I am referring now to the value of the property, the property conveyed to you and your sister constituted at least two-thirds of the property of the estate, did it not, in value?
A. It probably did.
Q. It exceeded $10,000.00, didn't it, the property conveyed?
A. It was listed about that, I think.

The value of the part that I received from my mother was worth over $2,000.00.

Q. You gave nothing for it; you received it as a gift, you say, from your mother?
A. No cash consideration, no.

Q. Nor any other consideration except your assignment to your mother?

A. That I was to take care of her the rest of her life.

Q. Wasn't that the consideration for a later deed in 1928?

A. It was for both of them; it was understood that we would take care of her, both of us, my sister and I, and later when the deed to the house was turned over to me, I agreed to take it on myself to take care of her.

Q. You agreed in 1928 to take care of your mother?

A. Yes, sir, that is when the transfer was made.

Q. When she conveyed to you that last piece of real estate?

A. Yes.

Q. But in 1920 this was just a matter of convenient settlement of your father's estate, wasn't it?

A. How do you mean?

Q. The reason that you conveyed or assigned to your mother and then had a decree of distribution to her, and a deed back to you and your sister, wasn't that merely Mr. Burton's convenient way of settling the estate?

A. Well, it was according to the recommendation of the attorney. I don't know—it was mother's wishes, that was all. There was no understanding that mother would deed back to me at all.

Q. The conveyance to your sister was on the 20th of March, 1920, just nine days after the court decree, wasn't it?

A. I don't remember the date.

[fol. 21] Mr. Baker: We have admitted the records on that if you have a record there.

Mr. Hoyt: I have certified copies of the deeds from Rhoda Forrest as they appear on the county records. Will you stipulate that they may be introduced?

Mr. Baker: Subject to our objection that they are incompetent, irrelevant, immaterial; we admit they are certified copies.

(Thereupon plaintiff offered in evidence plaintiff's Exhibit A, being certified copies of four deeds. The exhibit was received and defendant noted exception. Thereupon plaintiff's Exhibit B, an original deed was received in evidence without objection. Plaintiff's Exhibits A and B are

attached at the end of this Bill of Exceptions and made a part hereof.)

I don't know why the language "This property comes to granteee as an heir at law of Henry Forrest, deceased" was put on my deed. I don't know whether it was put on before it was recorded or not. The typewriting of those words looks different from the balance of the deed. It is blacker, that is the only difference I can see. It is a little smaller, too. I think the deed was recorded at my request. I don't know why he put in that language "This property comes to grantee as an heir at law of Henry Forrest, deceased." I did not remember it was in there at all.

I don't remember anything about the notation in the deed to Emma L. Hawkins "This property comes to grantee as an heir at law of Henry Forrest, deceased." Those deeds were put in by Mr. Burton. He had them recorded and sent to me as I remember it. I did not really know what was in them. I left the handling of it pretty largely to Mr. Burton. I was interested in the estate as remainderman. My mother was given a life interest with the remainder to us if there was anything left. I signed the inventory in the matter of my father's estate. The property as shown by that inventory was valued at a total of $17,481.85. Part of the notes were never collected. They were not worth the inventory value and were stricken off later. All of the real estate except two small parcels were transferred to me and my sister within about six weeks after the decree of distribution was entered. The trans-[fol. 22] fer was made without any consideration, only one dollar. He said to pay mother one dollar, and I paid it. I signed the petition for final discharge of administrator in my father's estate in which it is recited:

"That on the 11th day of March, 1920, by a decree of this court duly made and entered herein, all of the residue of said estate was distributed to said Rhoda Forrest, and with the exception of six shares of the capital stock of the Nephi National Bank, said Rhoda Forrest took possession of, and disposed of all of the said property so distributed to her, during her lifetime."

Mother took possession of the stock, too.

Q. Why did you say with the exception of it?

A. I don't know. I did not know that was in there.
Q. You read this before signing it, did you not?
A. I don't know whether I did or not.

In 1928 mother gave me a deed to the last piece of property that stood in her name. That property did not come from the estate.

Q. You knew at all times that that bank stock had not been transferred to your mother on the books of the bank, did you not, Mr. Forrest?
A. I was aware that it had not been transferred. She did not want it.
Q. She did not want the stock?
A. No.
Q. You had reason to believe that the bank was in failing circumstances, and you did not want it, and she did not want it?
A. I did not. At that time there was nothing said.

At that time I don't know as it was thought anything about the bank failing. But they had not paid any dividends, and she did not want it, so she said.

The dividend check issued subsequent to the decree of distribution, that is on June 30, 1920, came to me by mail. It was made out to "Henry Forrest, estate."

Q. So that you knew at that time that the stock had not been transferred on the books of the bank?
[fol. 23] A. Yes.
Q. And you did not transfer it, because your mother did not want it?
A. She had it but she did not want it transferred.
Q. You did not take any refunding bond or any indemnity from your mother to protect you from any liability that might attach to the bank stock?
A. No, I never thought of anything of that kind.

My mother died in July 1931. On the 18th of November 1931, I had Mr. Bryan take the certificates to the bank and leave them with the cashier. I had no reason to believe the bank was in failing circumstances. I did not know. I had withdrawn my deposit from that bank a long time before. A year or two before. It was not for that reason, though. It was for other reasons.

Q. Why did you go to the bother in 1931 of petitioning the court for your discharge as administrator after allowing the matter to drag on from 1920?

A. Because mother had died and I was advised to do it.

Mother died in July—about five or six months before the petition. There was no connection between my wanting to be discharged as administrator, and rumors of the impending insolvency of the Nephi National Bank. It was not because I was afraid the bank was going to fail that I was anxious to be discharged. I did not see any reason why I should still be administrator after she was dead. There was nothing to administer.

Q. Was there any reason for your being administrator of your father's estate after it was distributed?

A. I don't know that there was, only to take care of mother.

Q. So you allowed yourself to continue as administrator in order to take care of your mother as long as she lived?

A. Partly.

Q. And then after her death you got yourself discharged?

A. Yes.

I knew at the time I received my deed from my mother in 1920 that I had not transferred the bank stock to her. [fol. 24] I knew she did not want the stock. I accepted property worth more than $2,000.00 from my mother. It was deeded to me.

I don't remember receiving more than one dividend check from the Nephi National Bank. I did not make any effort at any time to get the stock transferred into my mother's name on the books of the bank. I tried to sell it for her one time, eight or ten years ago. Mother and I together looked after her business for her subsequent to my father's death. I had the most of it to do. My mother left no estate at the time of her death, outside of the bank stock.

Plaintiff rests.

Defendant rests.

MOTION BY PLAINTIFF FOR JUDGMENT

Mr Hoyt: The plaintiff now moves the court for a declaration of law and judgment in plaintiff's favor, and further moves the court, in case the court rules against the plain-

tiff's contention as to the liability of the defendant in a law action, that the cause be transferred to the equity side of the court, and that a decree be entered in favor of the plaintiff impressing the property described in plaintiff's second amended complaint with a lien for the payment of the stockholder's liability referred to in said complaint.

MOTION BY DEFENDANT FOR JUDGMENT

Mr. Baker: Comes now the defendant and moves the court for a judgment and declaration of law in defendant's favor to the effect that the second amended complaint of the plaintiff does not state facts sufficient to constitute any cause of action as against the defendant, and that the evidence in the case is insufficient to sustain any action at law or any relief whatsoever on behalf of the plaintiff as against the defendant, and that defendant recover costs.

The Court: The motion of the plaintiff for a declaration of law and judgment in plaintiff's favor is denied and plaintiff's motion for leave to transfer the cause to the equity side of the court for the purpose of impressing property described in the complaint with a lien will be denied. The motion of the defendant on the evidence will be granted, and the case dismissed, the defendant to recover his costs. [fol. 25] Mr. Hoyt: The plaintiff excepts to the ruling of the court granting the defendant's motion, and also to the ruling of the court denying the plaintiff's motion for a declaration of law and judgment in plaintiff's favor, and denying plaintiff's motion to have the cause transferred to the equity side of the court and for a decree impressing the property described in the second amended complaint with a lien in plaintiff's favor for the payment of the stockholder's liability referred to in said amended complaint.

DEFENDANT'S EXHIBIT 1

In the District Court of the Fifth Judicial District in and for Juab County, State of Utah

In the Matter of the Estate of HENRY FORREST, Deceased

Decree of Distribution

Ernest R. Forrest, administrator with the will annexed of the estate of Henry Forrest, deceased, having on this 18

day of February, 1920, rendered and filed herein a full account and report of his administration of said estate, which account was for final settlement, and having with said account filed a petition for the distribution of said estate; and the said petition set forth, among other things, that all accounts have been filed and settled and that said estate is in a condition to be closed and that a portion of said estate remains to be distributed to the heirs of said decedent who may be entitled thereto and praying that said residue be distributed to the parties entitled thereto, and said matter coming on regularly to be heard this 11th day of March, 1928, this court proceeds to the hearing of said petition; and it appearing to the satisfaction of this court that the clerk had fixed the time and place of the hearing of said petition and giving due notice thereof as required by law; that all of the heirs at law of said deceased had given their assent in writing waiving notice and time of the hearing of the petition for decree of distributon and of the hearing of the final account and consent that said final account may be allowed and approved as filed; that said final accounts have been fully settled; that all taxes upon the property of the estate, including all inheritance tax which has become due and payable, have been fully paid and that [fol. 26] all legacies have been fully satisfied and that the residue of said estate consisting of the property hereinafter particularly described, is now ready for distribution and said estate is now in a condition to be closed.

And it further appearing that Ernest R. Forrest and Emma Lucile Hawkins, heirs at law of said deceased, have made, executed and delivered unto the said Rhoda Forrest, the only other heir of said deceased, for a valuable consideration, a good and sufficient conveyance for all of their right, title and interest of, in and to all of the real and personal estate of said deceased, and that the said Rhoda Forrest then and there became the owner in fee of the interest of the said Ernest R. Forrest, and Emma Lucile Hawkins as heirs at law, or otherwise, of, in and to all of the property of said estate

And it further appearing that the said Rhoda Forrest, widow of the said deceased, is now the owner in fee of all of the residue of said estate and as the grantee of said heirs of said Henry Forrest, deceased, is entitled to have all of the residue of said estate distributed to her by a decree of this court.

And it further appearing that said Henry Forrest left surviving him those certain persons whose names and relationship to the said deceased are as follows.

Rhoda Forrest, widow of said deceased, age 69 years, Ernest R. Forrest, a son of said deceased, age 45 years, and Emma Lucile Hawkins a daughter of said deceased, age 28 years, all residing at Nephi City, Juab County, Utah.

Now, Therefore, on motion of Thomas H. Burton, Esq., counsel for the administrator of said estate, no objection being made thereto, it is hereby Ordered, Adjudged and Decreed that the residue of the estate of Henry Forrest, deceased, hereinafter particularly described and now remaining in the hands of the said administrator, and any other property which may belong to said estate or which said estate may have any interest in, be and the same is hereby distributed to Rhoda Forrest, widow of said deceased, absolutely and forever.

The following is a particular description of the said resi- [fol. 27] due of said estate referred to in this decree of which distribution is ordered, adjudged and decreed as aforesaid, to-wit:

Personal Property

Promissory note of George McCune, secured by mortgage given in the amount of $1750.00, dated October 11th, 1909	$1750.00
Promissory note of Ed. Knowlden, dated Feb. 20, 1909, given for $115.00 at 10% interest, account due on same	75.00
Promissory note of A. V. Hague, dated July 2nd, 1912, given for $80.00 at 8% interest	80.00
Promissory note of Orson Worthington, dated February 17th, 1914, given for $52.65, at 8% interest	52.65
Promissory note of Jake Bowers, dated Sept. 18, 1909, given for $25.00, interest at 12%, present value	10.00
Promissory note of C. R. Foote, dated Dec. 20, 1910, given for $50 interest at 10%	20.00
Promissory note of H. Carter, dated Feb. 7, 1915, given for $50.00 interest at 8%	50.00
Six shares of Capital Stock of Nephi National Bank	600.00
1¼ Shares Capital Stock of Nephi Irrigation Company	125.00

Real Property

Beginning at the Northwest Corner of Lot 4, Block 20, Plat "A" of the Nephi Survey of Building Lots, thence running East 38 feet; thence South 4 rods and 21 links; thence West 38 feet; thence North 4 rods and 21 links to the place of beginning.

Also, beginning 80 feet South of Northwest corner of said Lot 4, thence running East 38 feet; thence South 18 feet; thence Southwesterly to a point 31 feet South of place of beginning; thence North 31 feet to the place of beginning,

Beginning at the Southwest corner of Lot 3, block 20, Plat "A" of the Nephi Survey of Building Lots, thence North 3 rods; thence East 13 rods; thence South 3 rods; thence West 13 rods to beginning,

Beginning 3 rods North of the Southwest corner of Lot 3, Block 20, Plat "A" of the Nephi Survey of Building [fol. 28] Lots, thence running North 3½ rods; thence East 13 rods; thence South 3½ rods; thence West 13 rods to the place of beginning,

Beginning 7 rods North of the Southeast corner of Lot 1, Block 44, Plat "A" of the Nephi Survey of Building Lots; thence West 68 feet 9 inches; thence North 3½ rods; thence East 68 feet, 9 inches; thence South 3½ rods to the place of beginning.

An undivided one-half interest in and to the following:

Beginning at a point 60 feet 9 inches South of the Northwest corner of Lot 3, Block 36, Plat "A" of the Nephi Survey of Building Lots; thence running East 110 feet; thence South 6 feet 6 inches; thence East 52 feet; thence South 40 feet; thence West 162 feet; thence North 46 feet 6 inches to the place of beginning,

Beginning 68 and ¾ feet West of the Southeast corner of Lot 1, Block 44, Plat "A" of the Nephi Survey of Building Lots; thence West 46 and ¾ feet; thence North 16 rods; thence East 46¾ feet; thence South 16 rods to the place of beginning,

All of Lot 4, Block 18, Plat "A" of the Nephi Survey of Building Lots.

Done in open court this 11th day of March, A. D. 1920.

(Signed) D. H. Morris, Judge.

Filed April 7, 1920.

IN THE DISTRICT COURT, PROBATE DIVISION, IN AND FOR COUNTY OF JUAB, STATE OF UTAH

In the Matter of the Estate of HENRY FORREST, Deceased

Decree Showing That Due and Legal Notice to Creditors Has Been Given

It appearing to the satisfaction of this court that due and legal notice to creditors of said estate has been given:

It Is Hereby Ordered, Adjudged and Decreed, that due and legal notice to the creditors of said Henry Forrest, [fol. 29] deceased, has been given; that the same is established of record and that this decree be entered upon the minutes of this court.

By the Court.

D. H. Morris, District Judge.

Dated this 12 day of March, A. D. 1920.
Filed April 9, 1920.

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR THE COUNTY OF JUAB

In the Matter of the Estate of HENRY FORREST, Deceased

Order Approving Account

It appearing to the court that E. R. Forrest, as administrator of the above entitled estate, has presented his final account for settlement and allowance and has filed his petition for discharge, and the said matter coming on regularly to be heard this — day of ——, 1920, and proof having been submitted showing to the satisfaction of the court that said account is true and correct and should be allowed; and that proper vouchers covering disbursements are filed; and it further appearing that there are funds and property in the hands of the Administrator for distribution; and that all of the acts of the said E. R. Forrest, as such administrator have been in conformity with law and the orders of this court herein made, and that said estate has been closed.

And it further appearing that all of the heirs of said estate have filed in this court their written waiver and con-

sent waivering all time and notice of the hearing of the final account of the Administrator of said estate, and have consented that said final account may be settled, allowed and approved as rendered.

Now, Therefore, it is Ordered and Decreed that the final account of the said administrator be and the same is hereby approved, allowed and settled in all respects as the same is rendered and presented for settlement.

Dated this 11th day of March, 1920.

(Signed) D. H. Morris, Judge.

Filed April 10, 1920.

[fol. 30] In the District Court of the Fifth Judicial District in and for the County of Juab, State of Utah

In the Matter of the Estate of Henry Forrest, Deceased

Petition for Final Discharge of Administrator

The undersigned. Ernest R. Forrest, administrator, with the will annexed, of the estate of Henry Forrest, deceased, and heir at law of said decedent, and Emma Lucile Hawkins, daughter and heir at law of said decedent, and Mabel Ruth Lunt—nee Mabel Ruth Owen, legatee named in the last will and testament to participate in the estate of said decedent, respectfully represent to and petition this Honorable Court, as follows:

1

That said Henry Forrest died testate at Nephi City, Juab County, State of Utah, on the 17th day of August, A. D. 1917, being at the time of his death a resident of said City, County and State and leaving therein both real and personal property.

2

That said testator left a will which was duly admitted to probate by an order of this court dated March 9th, 1918, as the Last Will and Testament, of said decedent.

3

That by an order of this court duly made and entered herein, Ernest R. Forrest was appointed administrator of

said estate with the will annexed on the 9th day of March, A. D. 1918, and he duly qualified as such administrator by filing the bond and taking and subscribing the oath prescribed by law, and Letters of Administration was issued to him and he entered upon the duties of said trust and he has ever since been and now is the duly appointed, qualified and acting administrator of said estate.

4

That under the provisions of said will, Rhoda Forrest, surviving wife of said decedent, and Ernest R. Forrest, son of said decedent, and Emma Lucile Hawkins, named in said will as Lucille Hawkins, and Mabel Ruth Lunt, named in said will as Mabel Ruth Owen; the said Emma Lucile Hawkins being a daughter of said decedent and the said Mabel Ruth Lunt being a niece of said decedent, are all of and the [fol. 31] only persons named in said will as beneficiaries thereunder; and the only heirs at law of said decedent, and the only persons interested in the estate of said decedent.

That said surviving wife, Rhoda Forrest, died intestate at Nephi City, Juab County, State of Utah, on the 4 day of July, A. D. 1931.

That said Ernest R. Forrest, son of said Henry Forrest, deceased, is 60 years of age and resides at Nephi City, Utah.

That said Emma Lucile Hawkins, daughter of said Henry Forrest, deceased, is 40 years of age and resides at Nephi City, Utah.

That said Mabel Ruth Lunt is 32 years of age and resides at Nephi, Utah.

5

That on the 18th of February, 1920, said administrator filed his final account of his administration and said estate in this court, and on the 11th day of March, 1920, this court made an order and decree allowing, approving and settling said account, and with said Final Account said administrator also filed herein his petition praying for a decree distributing the residue of said estate in the hands of said administrator to Rhoda Forrest, widow of said decedent, who had, by conveyances duly executed, acknowledged and delivered to her by all other parties interest in said estate, become the owner of all of the residue of said estate and entitled to a decree distributing the same to her.

6

That on the 11th day of March, 1920, by a decree of this court, duly made and entered herein, all of the residue of said estate was distributed to said Rhoda Forrest, and with the exception of Six shares of the Capital Stock of Nephi National Bank, said Rhoda Forrest took possession of, and disposed of all of the said property so distributed to her, during her lifetime.

That these petitioners are informed and believed that said sixe shares of the capital stock of Nephi National Bank is all of the property owned by said Rhoda Forrest at the time of her death on the 4 day of July, 1931.

7

That said six shares of the Capital Stock of Nephi National Bank are described as follows:

[fol. 32] Certificate No. 56, date May 28th, A. D. 1907, signed by E. R. Booth, Cashier, and J. S. Ostler, President, issued to Henry Forrest for one share.

Certificate No. 57, dated May 28, A. D. 1907, signed by E. R. Booth, Cashier, and J. S. Ostler, President, issued to Henry Forrest for five shares.

That, together with a certified copy of the said decree of distribution as aforesaid, distributiing the said six shares of capital stock to said Rhoda Forrest, said administrator has delivered said six shares of capital stock to said Nephi National Bank, to be held in trust for the estate of said Rhoda Forrest, deceased, and has filed with this petition the voucher of said Nephi National Bank evidencing such delivery.

8

That said administrator has paid all sum of money due from him, and has delivered up, under the order of this court, all property of the estate to the parties entitled thereto, and that he has performed all the acts required of him by law, that said estate has been fully administered and that he has filed vouchers, as provided by law in this court.

9

That said Ernest R. Forrest, Emma Lucile Hawkins and Mabel Ruth Lunt are all of the persons interested in the

estate of said Henry Forrest, deceased, and they hereby waive notice of hearing to be had upon this petition, and join said administrator in the same.

Therefore petitioners pray that said administrator be discharged from the further administration of said estate; and this bondsmen be released and discharged from liability; and that such order of discharge be made without notice.

(Signed) Ernest R. Forrest, Administrator. (Signed) Ernest R. Forrest, Son and Heir. (Signed) Emma Lucille Hawkins, Daughter and Heir. (Signed) Mable Ruth Lunt, Niece and Legatee. (Signed) Wm. A. C. Bryan, Attorney for Petitioners.

[fol. 33] STATE OF UTAH,
County of Juab, ss:

Ernest R. Forrest, being first duly sworn says that he is the duly appointed, qualified and acting administrator of the estate of Henry Forrest, deceased; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information and belief and as to those matters, he believes it to be true.

(Signed) Ernest R. Forrest.

Subscribed and sworn to before me this 17th day of November, A. D. 1931. (Signed) Wm. A. C. Bryan, Notary Public. (Notarial Seal.) Residing at Nephi, Utah. My commission expires May 6th, 1934.

Filed November 18, 1931.

Nephi City, Utah, November 18th, 1931.

This is to certify that Nephi National Bank, a corporation organized and existing under and by virtue of the laws of the United States of America, has on this 18th day of November, A. D. 1931, received from Ernest R. Forrest, administrator of the estate of Henry Forrest, deceased, the following described certificates of the capital stock of said Bank, to-wit:

Certificate No. 56 date May 28th, A. D. 1907, signed by E. R. Booth, Cashier, and R. S. Ostler, President, issued to Henry Forrest for one share.

Certificate No. 57 dated May 28, A. D. 1907, signed E. R. Booth, Cashier, and R. S. Ostler, President, issued to Henry Forrest for five shares.

The said certificates and each of them to be held in trust for the estate of Rhoda Forrest, deceased.

Nephi National Bank, by Ralph Brough, C'hr.

Filed Nov. 18, 1931.

[fol. 34] IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF UTAH IN AND FOR THE COUNTY OF JUAB

In the Matter of the Estate of HENRY FORREST, Deceased

Decree of Final Discharge

The petition of Ernest R. Forrest, administrator of the estate of Henry Forrest, deceased, joined in by Emma Lucile Hawkins, daughter, and Mabel Ruth Lunt, niece of said decedent; they being all of the persons interested in said estate, coming on regularly for hearing, and it appearing that said estate has been fully administered, and that said administrator has paid all sums of money due from him, and has delivered up all property of said estate to the parties entitled thereto, in pursuance of the orders and decrees of this court, and has filed herein satisfactory vouchers thereof; and all persons interested in said estate having, in writing waived notice of this hearing and prayed that an order be made, without notice, discharging said administrator from the further administration of said estate, and that his bondsmen be released and discharged from liability to be hereafter incurred;

It is ordered, adjudged and decreed that said administrator be, and he is hereby discharged from further administering said estate, and his bondsmen are released from any liability to be hereafter incurred.

Dated December 1st, 1931.

Leroy H. Cox, Judge.

Filed December 3, 1931.

UNITED STATES OF AMERICA,
State of Utah,
County of Juab:

I, J. H. Vickers, County Clerk and Ex-Officio Clerk of the District Court in and for the County of Juab, State of Utah, do hereby certify that the above and foregoing is a full, true and correct copy if the original, Decree of Distribution, Decree Showing that Due and Legal Notice to Creditors has been Given, Order Authorizing Administrator to Release Mortgages, Decree Settling Inheritance Tax, Order Approving Account, Petition for Final Discharge of Administrator, Voucher of Nephi National Bank for Six Shares of Capital Stock, and Decree of Final Dis- [fol. 35] charge; In the Matter of the Estate of Henry Forrest, deceased, Probate File #427; as the same appears on record and on file in my office.

In witness whereof I have set my hand and affix my official seal, at my office in Nephi City, Juab County, Utah, this 28 day of April, A. D. 1933.

(Signed) J. H. Vickers, County Clerk and ex-officio Clerk of the District Court in and for Juab County. (Seal.)

DEFENDANT'S EXHIBIT 2

Nephi, Utah, Jun. 30, 1920.

No. 97-39

Nephi National Bank

Pay to the order of Henry Forrest, Estate, $30.00 Thirty Dollars Only Dollars for Dividend No. 24.

J. W. Boud, Cashier.

(Endorsed on reversed side as follows:)

Deposit to Mrs. Rhoda Forrest, Henry Forrest Estate, by E. R. Forrest, Adm.

PLAINTIFF'S EXHIBIT A

F. W. O.

Warranty Deed

Rhoda Forrest, Grantor of Nephi City, Juab County, Utah, hereby conveys and warrants to Emma Lucille Hawkins, Grantee, of Salt Lake City, Salt Lake County, Utah, for the sum of one ($1.00) Dollar and other valuable considerations, the following described tract of land, in Juab County, Utah, to-wit:

Beginning 68 rods ¾ feet West of the Southeast corner of Lot 1, Block 44, Plat "A", of the Nephi Survey of Building Lots; thence west 46 and ¾ feet; thence North 16 rods; thence East 46 and ¾ feet; thence South 16 rods to the place of beginning.

[fol. 36] This property comes to grantee as an heir at law of Henry Forrest, deceased.

Witness the hand of said grantor this 16th day of April, A. D. 1920.

Her
Rhoda X Forrest.
Mark

Signed in the presence of Thos. H. Burton, Sarah O. Luff.

STATE OF UTAH,
County of Juab, ss:

On this 16th day of April, A. D. 1920, personally appeared before me Rhoda Forrest, the signer of the above instrument who duly acknowledged to me that she executed the same.

Thos. H. Burton, Notary Public. (Seal.) My commission expires August 27th, 1921.

No. 29150 recorded at the request of R. H. Hawkins, Sept. 7th, 1921, at 11 A. M.

Geo. W. Lunt, County Recorder, by Mayme Riches, Deputy.

Warranty Deed

Rhoda Forrest, Grantor of Nephi City, Juab County, State of Utah, hereby conveys and warrants to Emma

Lucille Hawkins, Grantee, of the same place for the sum of one ($1.00) Dollar and other valuable considerations, the following described tract of land in Juab County, State of Utah, to-wit:

An undivided ½ interest of in and to the following property, to-wit:

Beginning at a point 60 feet 9 inches South of the Northwest corner of Lot 3, Block 36, Plat "A" of the Nephi Survey of Building Lots; thence running East 110 feet; thence South 6 feet 6 inches; thence East 52 feet; thence South 40 feet; thence West 162 feet; thence North 46 feet 6 inches to the place of beginning.

Together with all buildings and improvements located thereon or in any way appertaining thereto.

[fol. 37] Witness the hand of said Grantor this 20 day of March, A. D. 1920.

. . . .

Her
Rhoda X Forrest.
Mark

Signed in the presence of Thos. H. Burton, Sarah O. Luff.

STATE OF UTAH,
County of Juab, ss:

On this 20th day of March, A. D. 1920, personally appeared before me Rhoda Forrest, the signer of the above instrument who duly acknowledged to me that she executed the same.

Thos. H. Burton, Notary Public. (Notarial Seal.)
My commission expires August 27th, 1921.

No. 27422 recorded at the request of Thos. H. Burton, April 7, 1920, at 9 A. M.

Thomas Bailey, County Recorder.

Warranty Deed

Rhoda Forrest, grantor, of Nephi City, Juab County, State of Utah, hereby conveys and warrants to Ernest R. Forrest, Grantee, of the same place for the sum of one dollars and other valuable considerations, the following described tract of land situated in Nephi City, Juab County, Utah, and described as follows, to-wit:

Beginning at the Southwest corner of Lot 3, Block 20, Plat "A", of the Nephi Survey of Building Lots; thence North 3 rods; thence East 13 rods; thence South 3 rods; thence West 13 rods to the place of beginning.

Beginning 3 rods North of the Southwest corner of Lot 3, Block 20, Plat "A" of the Nephi Survey of Building Lots, thence running North 3½ rods; thence East 13 rods; thence South 3½ rods; thence West 13 rods to the place of beginning.

Together with all improvements located upon said premises.

The South ½ of Lot 4, Block 18, Plat "A", of Nephi Survey of Building Lots.

[fol. 38] Witness the hand of the said grantor this 16 day of April, A. D. 1920.

....

Her
Rhoda X Forrest.
Mark

Signed and delivered in the presence of Sarah O. Luff.

STATE OF UTAH,
County of Juab, ss:

On this 16 day of April, A. D. 1920, personally appeared before me Rhoda Forrest, the signer of the foregoing instrument who duly acknowledged to me that she executed the same.

Thos. H. Burton, Notary Public. (Seal.) My commission will expire August 27th, 1921.

This property comes to Grantee as an heir at law of Henry Forrest, deceased.

No. 27454 recorded at the request of E. R. Forrest, April 16, 1920, at 4:30 P. M.

Thomas Bailey, County Recorder.

Warranty Deed

Rhoda Forrest, Grantor, of Nephi City, Juab County, State of Utah, hereby conveys and warrants to Emma L. Hawkins, Grantee, of the same place for the sum of one ($1.00) dollar and other valuable considerations, the following described tract of land, in Juab County, State of Utah, to-wit:

Beginning 7 rods North of the Southeast corner of Lot 1, Block 44, Plat "A", of the Nephi Survey of Building Lots, thence West 68 feet 9 inches; thence North 3½ rods; thence East 68 feet 9 inches; thence South 3½ rods to the place of beginning.

Together with all improvements thereon.

This property comes to Grantee as an heir at law of Henry Forrest, deceased.

Witness the Hand of said Grantor this 16th day of April, A. D. 1920.

Her
Rhoda X Forrest.
Mark

Signed in the presence of Thos. H. Burton, Sarah O. Luff.

[fol. 39] STATE OF UTAH,
County of Juab, ss:

On this 16th day of April, A. D. 1920, personally appeared before me Rhoda Forrest, the signer of the above instrument who duly acknowledged to me that she executed the same.

Thos. H. Burton, Notary Public. (Seal.) My comsion expires August 27th, 1921.

No. 29151. Recorded at the request of R. H. Hawkins, Sept. 7th, 1921, at 11 A. M.

Geo. W. Lunt, County Recorder, by Mayme Riches, Deputy.

UNITED STATES OF AMERICA,
State of Utah,
County of Juab:

I, E. B. Sperry, Juab County Recorder in and for the County of Juab, State of Utah, do hereby certify that the above and foregoing is a full, true and correct copy of the original.

Warranty Deeds from Rhoda Forrest to Emma L. Hawkins; Rhoda Forrest to Emma Lucille Hawkins, and Rhoda Forrest to Ernest R. Forrest, also Warranty Deed from Rhoda Forrest, to Emma Lucille Hawkins, under date of March 20, 1920, as the same appears of record and on file in my office.

In witness whereof I have set my hand and affix my official seal, at my office in Nephi City, Juab County, Utah, this 28th day of April, A. D. 1933.

(Signed) E. B. Sperry, Juab County Recorder in and for Juab County, State of Utah. (Seal.)

PLAINTIFF'S EXHIBIT B

F. W. O.

Warranty Deed

Rhoda Forrest, Grantor of Nephi City, Juab County, State of Utah, hereby conveys and warrants to Ernest R. Forrest, Grantee of the same place for the sum of One [fol. 40] Dollar and other valuable considerations, the following described tract of land situated in Nephi City, Juab County, Utah, and described as follows, to-wit:

Beginning at the Southwest corner of Lot 3, Block 20, Plat "A" of the Nephi Survey of Building Lots; thence North 3 rods; thence East 13 rods; thence South 3 rods; thence West 13 rods to the place of beginning.

Beginning 3 rods North of the Southwest corner of Lot 3, Block 20, Plat "A" of the Nephi Survey of Building Lots, thence running North 3½ rods; thence East 13 rods; thence South 3½ rods; thence West 13 rods to the place of beginning.

Together with all improvements located upon said premises.

[Beginning 123 feet South of Northeast corner of Lot 4, Block 18, Plat "A", of Nephi Survey of Building Lots; thence South 103 feet more or less to the Southeast corner of said Lot 4; thence West 13 rods; thence North 103 feet more or less to a point due West of the place of beginning; Thence East 13 rods to place of] *

The South ½ of Lot 4, Block 18, Plat "A", Nephi Survey of Building Lots;

---

* [Matter enclosed in brackets erased in copy.]

Witness the Hand of the said grantor this 16 day of April, A. D. 1920.

Her
Rhoda X Forrest.
Mark

Signed and delivered in the presence of: (Signed) Sarah O. Luff.

STATE OF UTAH,
County of Juab, ss:

On this 16 day of April, A. D. 1920 personally appeared before me Rhoda Forrest, the signer of the foregoing instrument who duly acknowledged to me that she executed the same.

(Signed) Thos. H. Burton, Notary Public. (Seal.)
My commission will expire August 27th, 1921.

This property comes to Grantee as an heir at law of Henry Forrest, deceased.

[fol. 41] (On reverse side of Exhibit B is the following:)

No. 27454

Recorded April 16, 1920 at 4:30 P. M., in Book 90 of Deeds page 384 .
Thomas Bailey, Recorder, Juab County, Utah.

Recorded by P. N. Proof Read by B. & N.
Indexed Grantor F's. Grantee F's.
Abstracted Book Nephi 2. Page 588-52.
Fees Pd $1.00
Mail to E. R. Forrest, Nephi.

On the 29 day of April, 1933, the court denied the plaintiff's motion herein for a declaration of law and judgment in plaintiff's favor and granted judgment in favor of the defendant.

And the foregoing pages, consisting of 31 pages numbered from one to 31, inclusive, constitute and contain all the evidence and proceedings had on the trial of said cause and all of the same that is necessary or material in any way to a

consideration and review of the exceptions alleged and errors assigned and not otherwise appearing of record herein.

Dated this 26 day of May, 1933.

Will L. Hoyt, Attorney for Plaintiff.

Affidavit of Service by Mail

STATE OF UTAH,
County of Juab, ss:

Mabel Wilson being first duly sworn on oath deposes and says that she is a citizen of the United States over the age of twenty-one years:

That she is a stenographer in the office of Will L. Hoyt, plaintiff's attorney in the above entitled action.

That on the 26 day of May, 1933, she served the hereunto annexed Bill of Exceptions upon Claude F. Baker, Esq., attorney for defendant in said action, by enclosing a full, [fol. 42] true and correct copy of the hereunto annexed Bill of Exceptions in an envelope legibly addressed as follows:

"Mr. Claude F. Baker, Attorney at Law, Eureka, Utah"

and depositing the same with contents intact and postage fully prepaid thereon in due course of mails in the United Staes Post Office at Nephi, Utah; that there is a daily communication by mail between Nephi, Utah, and Eureka, Utah.

Mabel Wilson.

Subscribed and sworn to before me this 26 day of May, 1933. Will L. Hoyt, Notary Public. (Seal.) Residence, Nephi, Utah. My commission expires 10 May, 1934.

IN UNITED STATES DISTRICT COURT

ORDER SETTLING BILL OF EXCEPTIONS . . . . . .

The foregoing Bill of Exceptions, consisting of pages numbered from one to 33, inclusive, having been duly proposed, served and lodged with the clerk of this court within

the time allowed by law and timely orders of the court, and all the amendments proposed therto by the plaintiff having been duly allowed and engrossed therein, and being now presented to the undersigned judge of said court, before whom said cause was tried, and said proceedings had, the same is now allowed, settled, signed and certified as a true and correct Bill of Exceptions in the said cause.

Dated at Salt Lake City, Utah, this 26 day of June, 1933.

Tillman D. Johnson, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed May 29, 1933

To the Honorable Tillman D. Johnson, Judge of the District Court of the United States for the District of Utah:

The plaintiff, Arch R. Jack as receiver of the Nephi National Bank, a corporation, herein designated as appellant, feeling aggrieved by the judgment rendered and entered in the above entitled action on the 29 day of April, 1933, does hereby appeal from said judgment as entered in the United States District Court for the District of Utah [fol. 43] to the United States Circuit Court of Appeals for the Tenth Circuit for the reasons set forth in assignment of errors filed herewith, and prays that this appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said judgment is based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Tenth Circuit under the rules of said Court in such cases made and provided.

And petitioner further prays that, in accordance with the provisions of Title 28, Section 870, United States Code, this appeal may be allowed without any cost or supersedeas bond being required of appellant under said judgment and that all proceedings be stayed pending said appeal.

Dated this 27 day of May, 1933.

Will L. Hoyt, Attorney for Plaintiff and Appellant.

(Affidavit showing service by mail upon defendant's counsel 27 May, 1933, attached.)

[File endorsement omitted.]

In United States District Court

Assignment of Errors—Filed May 29, 1933

Comes now the plaintiff, Arch R. Jack as receiver of the Nephi National Bank of Nephi, Utah, hereinafter referred to as the appellant, and assigns the following errors which appellant avers occurred on the trial of this action and upon which the appellant relies to reverse the judgment entered herein the 29 day of April, 1933, to-wit:

1

That the court erred in denying plaintiff's motion for a declaration of law and judgment in plaintiff's favor.

2

That the court erred in denying plaintiff's motion to have the cause transferred to the equity side of the court, and in refusing to grant plaintiff's motion to impress the property described in the plaintiff's second amended complaint with a lien for the payment of the stockholders liability therein referred to and sought to be enforced.

[fol. 44]

3

That the court erred in granting defendant's motion for a declaration of law and judgment in favor of the defendant and dismissing the case.

4

That the judgment of the court entered herein was contrary to the law.

5

That the judgment of the court entered herein was contrary to the weight of the evidence.

Wherefore, the plaintiff and appellant, Arch R. Jack, receiver as aforesaid prays that the judgment of said District Court be reversed.

Will L. Hoyt, Attorney for Plaintiff and Appellant.

(Affidavit of service on defendant's counsel by mail 27 May, 1933, attached.)

[File endorsement omitted.]

In United States District Court

Order Allowing Appeal Without Bond—Filed June 26, 1933

It is ordered by the court that an appeal be, and is hereby allowed, to have reviewed in the United States Circuit Court of Appeals for the Tenth Circuit, the judgment heretofore rendered on the 29 day of April, 1933, in this action, and that such appeal may be taken by the plaintiff without cost or supersedeas bond and that execution herein be stayed pending such appeal or until the further order of the court.

Done in open court this 26 day of June, A. D. 1933.

Tillman D. Johnson, Judge.

Recital as to Citation and Service

[Citation in proper form, directed to appellee, was issued on August 9, 1933, and on August 12, 1933, service of said citation was accepted by counsel for said appellee.]

[fol. 45] In United States District Court

Præcipe for Transcript of Record—Filed August 24, 1933

Comes now Arch R. Jack as receiver of the Nephi National Bank of Nephi, Utah, plaintiff and appellant herein, and requests the clerk of the United States District Court for the District of Utah to certify a transcript of the record in the above entitled cause to the United States Circuit Court of Appeals for the Tenth Circuit by including therein the following:

1. Second Amended Complaint.
2. Demurrer to Second Amended Complaint.
3. Answer.
4. Reply.
5. Minute Entry of April 29, 1933.
6. Judgment dated April 29. 1933
7. Bill of Exceptions.
8. Plaintiff's Exhibit B (Original deed from Rhoda Forrest to Ernest R. Forrest).

9. Approval of Bill of Exceptions.
10. Petition for Appeal.
11. Assignment of Errors.
12. Order Allowing Appeal.
13. Election as to Printing.
14. Citation on Appeal.
15. This Præcipe.
16. Clerk's Certificate.

Dated at Nephi, Utah, this 11 day of August, 1933.
Will L. Hoyt, Attorney for Plaintiff and Appellant.

Service of above præcipe acknowledged this 11th day of August, 1933.
Claude F. Baker, Defendant's Attorney.

[fol. 46] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 47] In United States Circuit Court of Appeals, Tenth Circuit

Motion to Dismiss Appeal—Filed Nov. 10, 1933

Ernest R. Forrest, appellee, hereby enters a restricted appearance for purposes of this motion only, and moves to dismiss the appeal herein, upon the following grounds:

1. That the appeal herein is from a judgment rendered by a judge of the United States District Court for the District of Utah in an action at law, sitting without a jury. That no waiver of jury in writing was ever executed by any of the parties thereto, or filed in said cause, or made a part of the appeal record in this cause; that the pretended oral waiver of jury in said cause as shown by the transcript of record on page 15 is as follows:

"Upon stipulation in open court it was ordered that jury be waived * * *"

2. That appellant, at close of evidence at trial, failed to request special findings by the trial court of the facts es-

tablish. That the only request made by appellant is shown on page 24 of the transcript of record, and is as follows:

"Mr. Hoyt: The plaintiff now moves the court for a declaration of law and judgment in plaintiff's favor, and further moves the court, in case the court rules against plaintiff's contention as to the liability of defendant in a law action, that the cause be transferred to the equity side of the court, and that a decree be entered in favor of plaintiff impressing the property described in plaintiff's second amended complaint with a lien for the payment of the stockholder's liability referred to in said complaint."

3. That the appeal record is insufficient to permit a review of the judgment appealed from, and that this court is without jurisdiction to review said judgment for the reasons in this motion above stated.

4. That a copy of this motion has been served upon appellant. This motion is made on its contents, and the proof of service of this motion on appellant; upon all documents, records or papers now filed or hereinafter to be filed as a [fol. 48] part of the appeal record in this cause; and upon briefs or documents in support of this motion, and arguments in support of this motion, hereinafter to be presented to this court.

Wherefore, appellee prays that his motion to dismiss appeal be sustained.

Claude F. Baker, Eureka, Utah. Attorney for Appellee.

[File endorsement omitted.]

In United States Circuit Court of Appeals

Order of Submission—Jan. 24, 1934

This cause came on to be heard, Samuel W. Hayes, Esquire, appearing for appellant, no one appearing for appellee.

Thereupon this cause was argued by counsel for appellant on the motion to dismiss the appeal and on the merits and was submitted to the court.

In United States Circuit Court of Appeals, April Term, 1934

No. 944

[June 7, 1934]

Samuel W. Hayes (Will L. Hoyt was with him on the brief) for appellant.

Claude F. Baker was on the brief for appellee.

Before Lewis and Bratton, Circuit Judges, and Kennedy, District Judge

Opinion

Bratton, Circuit Judge, delivered the opinion of the court:

Henry Forrest died testate in 1917. At the time of his death he owned six shares of stock in Nephi National Bank of Nephi, Utah. They were issued and registered in his name and remained thus registered throughout the time re- [fol. 49] ferred to herein. They stood in his name at the time this suit was instituted. By will he bequeathed $1,000.00 to a niece and devised the remainer of his property as follows:

"All the rest, residue and remainder of all real and personal property, of any and every kind and nature whatever, owned by me at the time of my death, after satisfying the above-named directions and bequest, I give, devise and bequeath to my beloved wife Rhoda Forrest, for her sole use, behoof and benefit, in her support and maintenance for and during her natural life; and should my said wife leave, at the time of her death, any of said property, either real or personal, then I give, devise and bequeath all the rest, residue and remainder of all such property, real and personal of any and every kind and nature, to my beloved son Ernest R. Forrest and my beloved daughter Lucile Hawkins, to be equally divided between them, share and share alike."

The estate, excluding the stock, consisted of real and personal property of the approximate net value of $10,000.00. Ernest R. Forrest—son of decedent and defendant herein—was appointed and qualified as administrator with the will

annexed in March, 1918, and thereupon took possession of the property. During the administration proceedings he and his sister transferred their right, title and interest as remaindermen to their mother. On March 11th, 1920, the court having jurisdiction of the estate entered a decree reciting that all claims, accounts and taxes had been paid; that Ernest Forrest and Lucile Hawkins, heirs at law, had conveyed their interests to Rhoda Forrest, the remaining heir; that Rhoda Forrest thereupon became and was the sole owner of the property constituting the estate and directing that it be distributed to her. Defendant here, as administrator in that proceeding, thereupon delivered all of such property, including the stock, to his mother. He did not see the stock again until after she died in July, 1931. He then found it among her effects. About a month after the distribution had been made and while the administration proceedings were still pending, Rhoda Forrest conveyed by separate deeds to defendant and his sister certain parcels of land theretofore belonging to the estate, each deed reciting "this property comes to the grantee as an heir-at-law of Henry Forrest, deceased." Defendant paid no con-[fol. 50] sideration for the real estate which he thus acquired. He still owns it and it exceeds $2,000.00 in value. On November 18th, 1931, defendant filed a petition for his discharge as administrator. It was granted and the estate closed on December 4th, 1931.

The Nephi National Bank became insolvent and suspended business on December 1st, 1931—prior to the date on which the administration proceedings were closed and the administrator discharged. On March 8th, 1932, the Comptroller of the Currency laid an assessment against the stockholders of $100.00 for each share. That assessment, so far as it related to the stock in question, was not paid. The receiver of the bank thereafter instituted this action at law, pleading the facts in detail. It was alleged among other things that the duty rested upon defendant, while acting as administrator, to reserve sufficient of the assets of the estate to discharge the liability which might accrue through assessment, or to transfer the stock to a solvent distributee; that he did neither, but instead distributed all of the assets and that he acquired without consideration and now owns real estate formerly belonging to the estate exceeding in value the amount of the assessment in question. Personal judgment for $600.00 was sought.

After interposing certain admissions and denials, defendant pleaded in his answer that the stock had belonged to his mother since March 11th, 1920; that he distributed it to her in obedience to the decree of the court having jurisdiction of the estate; that the bank had knowledge of such facts and that on November 18th, 1931, he delivered the stock to the bank, taking a receipt for it reciting that it was to be held in trust for the estate of his mother.

Trial by jury having been waived, the case was tried to the court. Judgment was rendered for defendant. Plaintiff appealed.

Defendant presented a motion to dismiss the appeal on two grounds: first, that trial by jury was not waived in writing and, second, that plaintiff failed at the close of the evidence to request special findings of fact. The judgment recites that the parties stipulated in open court to waive trial by jury. Since the amendment of May 29th, 1930, written waiver is unnecessary. 28 U. S. C. A. §773; 46 Stat. 486. The recitation in the judgment that a jury [fol. 51] was waived sufficed. United States v. Perry 55 F. (2d) 819. The trial court in an action at law is not required to make special findings of fact. Hendrie v. Turpen, 50 F. (2d) 1049. The general finding made in this case was equivalent to a verdict of a jury. At the close of all evidence, plaintiff moved for a declaration of law and judgment in his favor. That was sufficient to present the questions raised on this appeal. Maryland Casualty Co. v. Jones, 279 U. S. 792; White v. United States, 48 F. (2d) 178. The motion is denied.

Addressing ourselves to the merits of the case, stockholders in a national bank are liable for the obligations of the bank, each to the amount of the par value of his stock, and a transfer of stock made within sixty days preceding failure of a bank to meet its obligations or with knowledge of impending failure does not absolve the transferor from liability. 12 U. S. C. A. §64. A person holding stock as executor or administrator is not personally liable as a stockholder, but the estate in his hands is liable in like manner and to the same extent as the testator or intestate would be if living and competent to act and hold the stock in his own name. Sec. 66, ibid.

One holding stock in a bank continues liable to assessment so long as the stock is allowed to remain registered in his

name, although he may have transferred it to another, unless the transfer is appropriately noted in the records of the bank. Cases so holding exist in multiplied numbers. There are certain exceptions to that general doctrine. The transferor is not liable where he makes a bona fide sale, endorses the certificate and requests an authorized officer of the bank to make the transfer on its records though the officer fails or neglects to do so, or where the stock is sold to an officer of the bank, accompanied by a blank transfer, and payment is made with funds of the bank. Perhaps other exceptions obtain, but none has application here.

Since the stock in question stood registered in the name of Henry Forrest at the time of his death, his estate became and remained liable for the assessment. The liability was contingent from the time he acquired the stock and caused it to be registered in his name until the assessment was imposed. It then became fixed but existed throughout that period and attached to the estate upon his death in the [fol. 52] meantime. And Rhoda Forrest, the distributee receiving the property belonging to the estate, took it burdened with the unextinguished liability even though the distribution was made prior to insolvency of the bank and before imposition of the assessment upon the holders of shares therein. Davis v. Weed, 7 Fed. Cas. 186; Witney v. Butler, 118 U. S. 655. The facts in Matteson v. Dent, 176 U. S. 521, were quite similar to those in this case. There, the stock stood in the name of the decedent at the time of his death. It was distributed to the widow and children. The bank subsequently became insolvent and suspended business. The assessment followed. The court held that the federal statute subjected the estate to liability although insolvency occurred after the demise of the shareholder and subsequent to distribution of the property, and that since the law of the State of Minnesota rendered distributees liable for the debts of an estate, each to the amount of his distributive share, the distributees in question were liable personally for the assessment. It required the two statutes—the state supplementing the federal—to render the distributees personally liable. But the only effect the statute of the state had was to make the allottees personally liable. It did not affect the liability of the estate. The federal statute rendered it liable despite the facts that the bank became insolvent after distribution had been made. That is the effect of the decision in that case. So here, it

must be held that the estate of Henry Forrest was liable for the assessment although the bank became insolvent and suspended business after the property had been distributed. And that liability carried with it an equitable lien upon the assets of the estate. Witters v. Sowles, 32 F. 130; Drain v. Stough, 61 F. (2d) 668.

Since Rhoda Forrest took the assets burdened with the obligation, the property or the proceeds thereof could be pursued into her hands. Witters v. Sowles, supra; Mann v. Kleisdorff, 16 F. (2d) 997; Luce v. Thompson, 36 F. (2d) 183. As distribution did not liberate the property in the hands of the distributee, certainly the subsequent conveyance to defendant did not discharge the land so conveyed because he acquired it without consideration and with full knowledge of all the facts.

Defendant never owned the stock. It never was registered in his name. Distribution of the assets in obedience to an order of the court having jurisdiction of the estate [fol. 53] and without fraud was not enough to constitute devastavit creating personal liability on his part. It is our conclusion, therefore, that he is not personally liable, but the property acquired from his mother, formerly a part of the estate, is subject to the obligation since its acquisition was effected without consideration and with knowledge of the undischarged liability.

Plaintiff's remedy was to proceed appropriately in equity to impress the property with the lien and to enforce it. Although the action originated as one at law for the recovery of a personal judgment, plaintiff presented a motion at the close of the evidence to transfer it to the equity docket and thereafter to impress such a lien upon the property if the court determined that he was not entitled to recover at law. The court should have sustained the motion. This court has power to make the transfer. Clarksburg Tr. Co. v. Commercial Casualty Co., 40 F. (2d) 626; Moon Motor Co. v. Moon, 58 F. (2d) 90. The facts were alleged in detail and the case was tried fully. Accordingly, there is no occasion for a retrial. In such circumstances, this court has the power and duty to make the transfer and, having done so, to consider the proceeding as one in equity. Irons v. Smith, 62 F. (2d) 644.

Defendant delivered the stock to the bank on November 18th, 1931. The bank has retained possession of it since that time. In an effort to extinguish liability, resort is

made to the well recognized doctrine that a transferor of stock in an insolvent national bank will not be held responsible for the neglect or carelessness of a bank or its officers in failing to make the transfer on the records of the bank where the transferor has done all that a prudent man would do. The contention is without effect here because the stock was thus deposited only thirteen days prior to the bank's suspension of business. Assuming that it was deposited with express direction to make the transfer on the records, that would be ineffective because the bank closed its doors and suspended business less than sixty days thereafter. Fletcher v. Porter, 20 F. (2d) 23; Jeffrys v. O'Neal, 64 F. (2d) 284. Furthermore, the receipt, upon which defendant relies, merely recites that the shares were held in trust for the estate of Rhoda Forrest. There is nothing in the receipt or otherwise in the record indicating that the bank was directed to note a transfer in its records.

[fol. 54] For the reasons stated the judgment is reversed, the cause transferred to equity and remanded with directions to enter a decree in conformity with the views herein expressed.

Reversed and Remanded.

IN UNITED STATES CIRCUIT COURT OF APPEALS

DISSENTING OPINION

LEWIS, Circuit Judge, dissents:

This is an action at law to recover a personal judgment against Ernest R. Forrest based on an assessment of $600.00 made by the Comptroller on six shares of the capital stock of the Nephi National Bank of Nephi, Utah. Certificates for the six shares were issued to Henry Forrest on May 8, 1907, and have remained in his name ever since. He died testate August 17, 1917, and on March 9, 1918, his son, appellee here, was appointed administrator of his estate with the will annexed. The administrator made final settlement of the estate in Probate Court in March, 1920, and on the 11th day of that month the court entered an order approving his acts, closing the estate and directing him to turn over to Rhoda Forrest, widow of decedent all the property in his hands, specifically naming

it including said six shares of bank stock, which the administrator shortly complied with. That order is not subject to collateral attack. Stovall v. Banks, 10 Wall. 583; Simmons v. Saul, 138 U. S. 439; Barrette v. Whitney, — Utah, —, 106 Pac. 522.

The bank suspended business on December 1, 1931. The Comptroller by his order found the bank to be insolvent on January 26, 1932, and appointed a receiver that day. By his order he assessed all of its stock 100% on March 8, 1932, payable April 15, 1932.

The decedent bequeathed $1000.00 to a niece and devised all the remainder of his property as follows:

"All the rest, residue and remainder of all real and personal property, of any and every kind and nature whatever, owned by me at the time of my death, after satisfying the above-named directions and bequest, I give, devise and bequeath to my beloved wife Rhoda Forrest for her sole use, behoof and benefit, in her support and maintenance for and during her natural life; and should my said wife leave, at the time of her death, any of said property, [fol. 55] either real or personal, then I give, devise and bequeath all the rest, residue and remainder of all such property, real and personal of any and every kind and nature, to my beloved son Ernest R. Forrest and my beloved daughter Lucile Hawkins, to be equally divided between them, share and share alike."

Henry Forrest's estate consisted of real and personal property of an approximate value of $10,000.00 over and above debts and costs of administration.

Rhoda Forrest died in July, 1931, and after her death her son, the appellee, next saw the stock certificates in a small box which she had kept at her home. That was eleven years after all the property had been delivered to her under the order of distribution.

It will be observed that the stockholder died in August, 1917; that appellee as administrator made his final settlement in March, 1920; that on the 11th day of that month the court entered its order approving his acts, closing the estate, and directing him to turn all the property in his hands over to Rhoda Forrest. There was no proof that any other property belonging to the estate came into his hands as administrator thereafter. The finding of insolv-

ency and the making of the assessment by the Comptroller were approximately twelve years after the estate was closed and its assets distributed in accordance with the will. The Acts of Congress (12 U. S. Code, Secs. 63 and 64) provide the double liability of shareholders, and section 66 thereof reads in this way:

"Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust fund would be, if living and competent to act and hold the stock in his own name."

Later sections provide for the procedure to be taken by the Comptroller, but it is to be observed that section 66 exempts those in representative capacity from personal liability for the assessment and restricts their liability to the assets and funds in their hands. Notwithstanding what was said in Matteson v. Dent, 176 U. S. 521, we must [fol. 56] now take the liability as a statutory one. McDonald v. Thompson, 184 U. S. 71; McClaine v. Rankin, 197 U. S. 154; Christopher v. Norvell, 201 U. S. 216, 225; Page v. Jones, 7 F. (2) 541, 544. No liability exists under the statute, nor cause of action accrues until a finding of insolvency and assessment made by the Comptroller. In McDonald v. Thompson, supra, the court said: "In such cases no debt becomes due to the receiver as such until a deficiency has been ascertained and an assessment made, * * *." In Rankin v. Barton, 199 U. S. 228, 232, the court said: "In other words, the liability dates from the order of the Comptroller."

Both of those findings were made in this case in 1932, long after the estate was closed and all of its assets were distributed, and according to the undisputed testimony nothing had occurred prior to December 1, 1931, when the bank closed its doors, which caused appellee or would have caused any reasonable person to suspect that it was in an insolvent condition or might become so; and that was almost eleven years subsequent to the distribution of the assets of the estate. I am therefore unable to see any ground on which appellant can maintain his contention that the case comes within the terms of said section 66.

There was no estate, no part of Henry Forrest's estate, in the hands of appellee when insolvency occurred and assessment was made, nor for many years prior thereto. Cases that have been held to come within the scope of said section are those where the stockholder died prior to insolvency and the making of the assessment and when the estate was not fully administered, and the assets remaining unadministered were made subject to the assessment. Zimmerman v. Carpenter, 84 F. (2) 747; Luce v. Thompson, 36 F. (2) 183. The application of said section to that condition is obvious. As said in the Zimmerman case, "if no liability on the stock arises until after the estate is fully distributed then there would be no estate to be charged." For twelve years prior to the assessment in this case there had been no estate of Henry Forrest, but it is said there was a lien on the property of the estate of Henry Forrest for the satisfaction of this assessment. No lien is given by statute, although the liability is fixed by statute. The lien is said to be equitable. In Hodges v. Meriwether, 55 F. (2) 29, 31, a like contention was made by the receiver. In response thereto the court said: "But [fol. 57] no lien, equitable or otherwise, attached to this property while it was the property of the estate and it passed to her clear of any such lien." Zimmerman v. Carpenter, supra, cited to sustain a contrary conclusion in Drain v. Stough, 61 F. (2) 668, does not support that view. The statement in Mann v. Kleisdorff, 16 F. (2) 997, 998, that in event an assessment is made after the running of the local statute of limitations the receiver could pursue his remedy against funds of decedent "into whosoever hands they might have come," is obiter. Moreover, it does not appear that there were no funds of the estate in the hands of the executrix at the time the assessment was made, as here. There were no liens, at common law without possession by the one claiming the lien. "Its policy was to discountenance secret liens inasmuch as they hinder trade and restrict the safe and speedy transfer of property." It is true that the creditors of a bank, whom the receiver here represents, had an equitable lien on the capital stock of the bank,—the funds paid in or to be paid in on subscription therefor, and those to be paid on this assessment; but it certainly cannot be that such a lien extends to all of the other property of each stockholder.

Pomeroy's Equity Jurisprudence, Section 1234, is in part this:

"The theory of equitable liens has its ultimate foundation, therefore, in contracts, express or implied, which either deal with, or in some manner relate to, specific property, such as a tract of land, particular chattels, or securities, a certain fund, and the like."

I find no authority sustaining the proposition that creditors of the corporation have an equitable lien on property of the stockholders aside from his interest in its capital stock. That lien, as pointed out by Cook on Corporations and other text writers, may be created by statute, by charter, or possibly by by-law or contract. There being no property or funds belonging to the estate of Henry Forrest in the hands of appellee as administrator at the time liability for the assessment arose and the cause of action accrued, nor for more than eleven years prior thereto, there was no *res* to which the asserted lien could attach nor assets of the estate to be followed into the hands of distributees. Moreover, the statute of Utah, section 7673 of the Laws of 1917, provides:

[fol. 58] "When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid or upon the heirs, devisees, or legatees to contribute to the payment of his claim; * * *."

This statute is contrary to the statute of Minnesota relied upon in Matteson v. Dent, supra, which sustained the right to recover in that case. Matteson, a National bank stockholder, died in July, 1895, intestate while residing in Saint Paul, Minnesota. The Probate Court there approved a final accounting in the administration of his estate in September, 1896, and entered a decree turning it over to his heirs. Thereafter in that year the bank became insolvent and an assessment was made against his shares by the Comptroller in January, 1897. The heirs were sued by the bank's receiver to recover the distributive shares received by them or so much thereof as might be necessary to satisfy the assessment. The action was brought in a state court

of Minnesota and was based on its statute, which provided that an action might be brought against all or part of the next of kin of deceased by his creditors to recover the distributive shares received by them out of an estate, or so much thereof as might be necessary to satisfy a debt of the intestate or his estate. Recovery was affirmed by the Supreme Court of Minnesota, 73 N. W. 416 and 75 N. W. 1041. The Supreme Court of the United States in that case (Matteson v. Dent, 176 U. S. 521) said at pages 529, 530: "Whether the effect of the allotment (distribution of the estate) was to extinguish the estate, was wholly dependent on the Minnesota law." The estate of Henry Forrest was extinguished by the Utah statute on the order of distribution and its execution, and the property thereof in the hands of the distributees and their grantees was beyond the reach of said section 66, supra. In Zimmerman v. Carpenter, 84 Fed. 747, 751, Judge Carland, in construing said section 66, makes this statement: "if no liability on the stock arises until after the estate is fully distributed, then there would be no estate to be charged." In Luce v. Thompson, supra, recovery was based in part on the opinions of the Supreme Court of Iowa wherein that court had applied the same rule that was set up by the [fol. 59] statute of Minnesota, permitting creditors to pursue the property of the decedent into the hands of the distributees in satisfaction of their claims.

It has been noted that the assessment of the Comptroller was for the full 100% of the face value of the stock. The complaint, parts of which are quoted in the majority opinion, seems to assume that appellee by his conduct became a stockholder in his father's stead and may be sued as such. I cannot agree with the assumption nor the conclusion therefrom, but accepting it for present purposes, then, in that event suit to recover by a receiver can only be at law and not in equity. Aufdenkamp v. L'Herrison, 56 F. (2) 344, and cases there cited.

There is another matter. Where section 66, supra, applies no lien can be adjudged by a court out of possession against property in the exclusive and lawful custody of a court of another jurisdiction, and no final judgment can be entered by such a court that would authorize the levy of an execution upon it, because it is already in custodia legis. The only remedy that can be afforded by a court to enforce

an assessment under the conditions set up in said section 66 is to allow the claim and provide that it be satisfied out of the property in the hands of the administrator. This is clearly pointed out by Judge Shiras in Wickham v. Hull, 60 Fed. 327. In my opinion the judgment of the District Court should be affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges

JUDGMENT—June 7, 1934

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be and the same is hereby re- [fol. 60] versed; that this cause be and the same is hereby transferred to the equity side of the docket and remanded to the said District Court with directions to enter a decree in conformity with the views expressed in the opinion of this court; and that Arch R. Jack, as Receiver of the Nephi National Bank of Nephi, Utah, a corporation, appellant, have and recover of and from Ernest R. Forrest, appellee, his costs herein and have execution therefor as at law.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION OF THE APPELLEE FOR AN ORDER STAYING MANDATE —Filed July 5, 1934

Your petitioner, Ernest R. Forrest, appellee herein, respectfully presents this, his application for an order staying the issuance of the mandate for thirty days pending application by your petitioner to the Supreme Court of the United States for a writ of certiorari, and in support thereof presents the following:

1. That the decision of the aforesaid court in said cause was made and entered on June 7, 1934.

2. That the matters invoked in said cause are as shown by the files and records of said cause and the decision of the aforesaid court, and the dissenting opinion in said cause.

3. That the reasons for allowance of said order are to permit your petitioner to make application to the Supreme Court of the United States for a writ of certiorari based, among other things, upon the reasons set forth in the dissenting opinion in said cause. That your petitioner has ordered and furnished funds for the necessary printed record copies required by his said application for a writ of certiorari.

Wherefore, your petitioner prays that a writ of mandate be stayed for thirty days from and after July 12, 1934.

Respectfully submitted, Claude F. Baker, James H. Pierce, Attorneys for Petitioner.

[File endorsement omitted.]

[fols. 61 & 62] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING MANDATE—July 5, 1934

This cause came on to be heard on the motion of appellee for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 63] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,842. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 214. Ernest R. Forrest, Petitioner, vs. Arch R. Jack, as Receiver of the Nephi National Bank of Nephi, Utah. Petition for a writ of certiorari and exhibit thereto. Filed July 23, 1934. File No. 214, O. T., 1934.